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JUN - 8 2007
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

JOHN M. SKONBERG, Bar No. 069409
TYLER M. PAETKAU, Bar No. 146305
MICHAEL G. PEDHIRNEY, Bar No. 233164
LITTLER MENDELSON
A Professional Corporation
650 California Street
20th Floor
San Francisco, CA 94108.2693
Telephone: 415.433.1940

Attorneys for Defendant
APPLERA CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEGAN KELLY,

Plaintiff,

v.

APPLERA CORPORATION and DOES
1-20, inclusive,

Defendants.

Case No.

C07-03002 EMC

NOTICE OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT UNDER
28 U.S.C. §§ 1332, 1441(b) AND 1446
(DIVERSITY)

Complaint Filed: April 23, 2007

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that Defendant APPLERA CORPORATION
("Defendant"), through its counsel, hereby notices the removal of the above-captioned suit from the
Superior Court of the State of California, County of Alameda, to the United States District Court for
the Northern District of California, pursuant to 28 U.S.C. §1332, 1441(b) and 1446.

This removal is based on diversity of citizenship. As required by 28 U.S.C. §
1446(d), Defendant is filing in the Superior Court of the State of California, County of Alameda,
Notice to Plaintiffs, Plaintiffs' Counsel and State Court of Removal of Civil Action to Federal Court
(with its attachments). A true and correct copy of said Notice without attachments is attached as
Exhibit A.

In support of this Notice of Removal, Defendant states the following:

1. On or about April 23, 2007, Plaintiff MEGAN KELLY ("Plaintiff") filed a Complaint ("Complaint") in the Superior Court of California, County of Alameda, which is captioned as follows: *Megan Kelly v. Applera Corporation and Does 1-20, inclusive*, designated case number RG07-322056 ("State Court Action"). A true and correct copy of the Complaint is attached as Exhibit B and incorporated herein by reference.

2. Plaintiff's Complaint alleges claims for: 1) Failure to Engage in the Interactive Process in Good Faith; 2) Failure to Accommodate; and 3) Employment Discrimination – Disability. Plaintiff's Complaint seeks, *inter alia*, the following remedial relief: general and compensatory damages for Plaintiff according to proof; punitive damages; and attorneys' fees and costs. (Exhibit B, p. 1-7).

3. Attached as Exhibit C is a true and correct copy of the Answer to the Complaint and Proof of Service filed by Defendant in the Superior Court of the State of California for the County of Alameda on June 7, 2007.

4. Defendant was served with the Summons and Complaint in this matter on or after May 11, 2007. Thus, this Notice of Removal is timely filed within thirty (30) days after the receipt of the Summons and Complaint by Defendant, as required by 29 U.S.C. § 1446(b).

5. No further pleadings have been filed in the State Court Action.

6. A copy of this Notice of Removal will be filed with the Clerk of the Superior Court of the State of California for the County of Alameda and served upon all parties, as required by 28 U.S.C. § 1446(d).

7. On the basis of diversity jurisdiction, this Court has subject matter jurisdiction under 28 U.S.C. § 1332 and removal is authorized under 28 U.S.C. § 1441(b). This action is between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1332(a).

JURISDICTION

8. This is a suit of a wholly civil nature brought in a California court. The action is now pending in Alameda County, California. Venue properly lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 84(a), 1391(a), and 1441(a).

1 This case may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §
 2 1441(b) because complete diversity exists between Plaintiffs and Defendants, and the amount in
 3 controversy exceeds the jurisdictional minimum of this Court.

4 INTRADISTRICT ASSIGNMENT

5 9. All civil actions that arise in the county of Contra Costa shall be assigned to
 6 the San Francisco Division or the Oakland Division. Northern District Civil Local Rule 3-2(c),(d);
 7 3-5(b). Therefore, assignment in either the San Francisco or Oakland Division is proper.

8 DIVERSITY OF CITIZENSHIP

9 10. Complete diversity exists between the parties because:

10 (a) Defendant is informed and believes, and on that basis alleges, that
 11 Plaintiff was at the time the State Court Action was filed, and still is, a citizen of the state of
 12 California. (Exhibit B, ¶1.)

13 (b) A corporation is a citizen of the state of incorporation and where it has
 14 its principal place of business. 28 U.S.C. § 1332(c)(1). Defendant is presently, and was at the time
 15 of the commencement of this suit, a citizen of the states of Connecticut and Delaware as provided in
 16 28 U.S.C. § 1332(c), because Defendant was and is a corporation duly organized and validly existing
 17 under and pursuant to the laws of the state of Delaware and has its principal place of business in
 18 Connecticut. As such, Applera is not a citizen of California and complete diversity exists between
 19 the parties. 28 U.S.C. §§ 1332, 1441(b).

20 (c) Although the Complaint includes Defendants Does 1 through 20,
 21 Defendant is informed and believes, and on that basis alleges, that none of these fictitiously named
 22 Defendants have been served with a copy of the Summons and Complaint and that they are not,
 23 therefore, parties to the above-captioned action. Moreover, pursuant to the express terms of 28
 24 U.S.C. § 1441(a), the citizenship of the defendants sued under fictitious names in this case shall be
 25 disregarded for purposes of removal. 28 U.S.C. § 1441(a); *Fristos v. Reynolds Metal Co.*, 615 F.2d.
 26 1209, 1213 (9th Cir. 1980).

27 AMOUNT IN CONTROVERSY

28 11. The amount in controversy exceeds the minimum required to invoke diversity

jurisdiction (\$75,000), and all of the other requirements for diversity jurisdiction are met. 28 U.S.C. § 1332.

(a) Although Plaintiff's Complaint is silent as to the amount of damages claimed, Defendant need only establish by a preponderance of evidence (*i.e.*, that it is "more likely than not") that Plaintiff's claims exceed the jurisdictional minimum. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004). The "amount in controversy" may be established by aggregating special damages (such as lost income), general damages (pain and suffering), punitive damages, and attorneys' fees. *Federal Civil Procedure Before Trial*, Schwarzer, *et al.*, § 2:440-444, and cases collected therein.

(b) Plaintiff alleges that because of Defendant's conduct, she "has suffered actual, consequential and incidental financial losses, including, without limitation, loss of earnings and other employment benefits and the intangible loss of employment-related opportunities for growth in her field and damage to her professional reputation, all in an amount subject to proof at trial." (Exhibit B, ¶ 31.) Plaintiff also claims that "[a]s a direct and proximate result of the wrongful acts of defendants, and each of them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress, including without limitation, depression, hopelessness, embarrassment, humiliation, degradation, loss of self-esteem, and mental anguish." (Exhibit B, ¶¶ 19, 25, 32). Plaintiff's Complaint also seeks from Defendant, *inter alia*, punitive damages and statutory attorneys' fees and costs. (Exhibit B, ¶¶ 20-21, 26-27 and 33-34).

(c) The undersigned has obtained pay information as to Plaintiff's employment history. At the time Plaintiff went on leave of absence from her employment, her annual gross earnings totaled approximately \$37,900. In addition, Plaintiff received company-provided medical insurance, retirement benefits, and other valuable benefits. Plaintiff alleges that since January 2006, she has continued to seek accommodations from Defendant that would allow her to return to work, and that Defendant has made no effort to return her to work. (Exhibit B, ¶¶ 12-15). On that basis, she seeks general and special damages, including lost salary and benefits. (Exhibit B, ¶ 31.) Based on Plaintiff Kathleen Craig's previous year of earnings, her alleged damages to date are at least \$53,691.67 and counting.

(d) Plaintiff also claims she is entitled to emotional distress damages as she claims he has suffered and continues to suffer physical pain, severe emotional distress, including without limitation, depression, hopelessness, embarrassment, humiliation, degradation, loss of self-esteem, and mental anguish.” (Exhibit B, ¶¶ 19, 25, 32). Such damages may prove substantial, and whether in combination with other damages or by themselves clearly will exceed the jurisdictional minimums of the removal statute. *See Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1034 (N.D. Cal. 2002) (noting that emotional distress damages in employment discrimination cases may prove substantial and recognizing case in which employment discrimination plaintiff was awarded \$3.5 million dollars for pain and suffering).


(e) In addition, Plaintiff seeks punitive damages. (Exhibit B, ¶¶ 21, 27, 32). The amount in controversy may include punitive damages when they are recoverable as a matter of law. *Simmons*, 209 F. Supp. 2d at 1033. Plaintiff’s causes of action are based on California’s Fair Employment and Housing Act (Exhibit B, ¶¶ 2, 10, 16-18, 23-24, 30), under which punitive damages are available. Cal. Govt. Code § 12904; *Simmons*, 209 F. Supp. 2d at 1033. Punitive damage awards in employment discrimination cases may be substantial. *See Simmons*, 209 F. Supp. 2d at 1033 (recognizing punitive damages awards in employment discrimination cases ranging from \$60,000 to \$121,000,000), and cases cited therein. Such damages may prove substantial, and whether in combination with other damages or by themselves clearly will exceed the jurisdictional minimums of the removal statute. *Id.*

(f) Additionally, Plaintiff seeks attorneys’ fees. In determining whether the amount in controversy exceeds \$75,000, the Court may also estimate the amount of reasonable attorneys’ fees likely to be recovered by a plaintiff if she were to prevail on her claims. *See Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002). In doing so, the Court consider the amount of attorneys’ fees that will accrue until the entire matter is resolved. *Simmons*, 209 F. Supp. 2d at 1034-35. Such fees may prove substantial, and whether in combination with Plaintiff’s damages or by themselves clearly will exceed the jurisdictional minimums of the removal statute. *Id.* Therefore Defendant has established by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount required for removal.

12. Therefore, the requirements of 28 U.S.C. § 1332(a) have been met in that the amount in controversy exceeds \$75,000, exclusive of interests and costs, and because this is a civil action between citizens of different states. Hence, the United States District Court for the Northern District of California has original jurisdiction over this matter and removal is authorized under 28 U.S.C. §1441(b).

WHEREFORE, pursuant to 28 U.S.C. §§ 1332 and 1441, Defendant removes this case from the Alameda County Superior Court to this Court.

Dated: June 8, 2007


JOHN M. SKONBERG
TYLER M. PAETKAU
MICHAEL G. PEDHIRNEY
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
APPLERA CORPORATION

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EXHIBIT A

1 JOHN M. SKONBERG, Bar No. 069409
2 TYLER M. PAETKAU, Bar No. 146305
3 MICHAEL G. PEDHIRNEY, Bar No. 233164
4 LITTLER MENDELSON
5 A Professional Corporation
6 650 California Street
7 20th Floor
8 San Francisco, CA 94108.2693
9 Telephone: 415.433.1940
10
11 Attorneys for Defendant
12 APPLERA CORPORATION
13
14
15

16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18
19 COUNTY OF ALAMEDA
20

21 MEGAN KELLY,

22 Plaintiff,

23 v.

24 APPLERA CORPORATION and DOES
25 1-20, inclusive,

26 Defendants.
27
28

Case No. RG07-322056

**NOTICE TO PLAINTIFF, PLAINTIFF'S
COUNSEL AND STATE COURT OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT UNDER 28 U.S.C. §§
1332, 1441(b) AND 1446 (DIVERSITY)**

Alameda County Superior Court
Case No. RG07-322056
Complaint Filed: April 23, 2007

29 TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ALAMEDA,
30 PLAINTIFF MEGAN KELLY, and PLAINTIFF'S ATTORNEY OF RECORD:

31 PLEASE TAKE NOTICE that Defendant APPLERA CORPORATION, through its
32 counsel, have on June 8, 2007, filed a Notice of Removal in the office of the Clerk of the United
33 States District Court in and for the Northern District of California pursuant to 28 U.S.C. §§1332,
34 1441(b) and 1446. A true and correct copy of said Notice of Removal and accompanying exhibits
35 are attached hereto and incorporated herein by reference as Exhibit A.

36 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of
37 said Notice of Removal of Civil Action with the United States District Court, together with the filing
38 of said Notice of Removal of a Civil Action with this Court, effects the removal of this action and
39 this Court may proceed no further unless and until the case is remanded.

1 JOHN M. SKONBERG, Bar No. 069409
2 TYLER M. PAETKAU, Bar No. 146305
3 MICHAEL G. PEDHIRNEY, Bar No. 233164
4 LITTLER MENDELSON
5 A Professional Corporation
6 650 California Street
7 20th Floor
8 San Francisco, CA 94108.2693
9 Telephone: 415.433.1940

10 Attorneys for Defendant
11 APPLERA CORPORATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 MEGAN KELLY,

Case No. RG07-322056

15 Plaintiff,

16 v.

PROOF OF SERVICE

17 APPLERA CORPORATION and DOES 1-
18 20, inclusive,

Complaint Filed: April 23, 2007

19 Defendants.

PROOF OF SERVICE

20 I am a resident of the State of California, over the age of eighteen years, and not a
21 party to the within action. My business address is 650 California Street, 20th Floor, San Francisco,
22 California 94108.2693. On June 8, 2007, I served the within document(s):

- 23 ❖ **NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL
24 COURT UNDER 28 U.S.C. §§ 1332, 1441(B) AND 1446
(DIVERSITY)**
- 25 ❖ **NOTICE TO PLAINTIFF, PLAINTIFF'S COUNSEL AND
26 STATE COURT OF REMOVAL OF CIVIL ACTION TO
27 FEDERAL COURT UNDER 28 U.S.C. §§ 1332, 1441(B) AND
28 1446 (DIVERSITY)**



by facsimile transmission on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. The names and facsimile numbers of the person(s) served are as set forth below.

EXHIBIT B

ENDORSED
FILED
ALAMEDA COUNTY

APR 23 2007

CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy

Maureen E. McFadden, SBN 203781
LAW OFFICES OF MAUREEN E. MCFADDEN
819 Bancroft Way
Berkeley, CA 94710
Ph (510) 845-5203
Fax (510) 868-0976

Attorney for Plaintiff
MEGAN KELLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

MEGAN KELLY,

Plaintiff,

vs.

APPLERA CORPORATION and DOES 1-20,
inclusive,

Defendants.

Case No.: RG 07322056

COMPLAINT FOR DAMAGES

1. Failure to Engage in the Interactive Process In Good Faith
2. Failure to Accommodate
3. Employment Discrimination - Disability

BY FAX

Plaintiff Megan Kelly alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff Megan Kelly is an individual who resides in Alameda County.
2. From on or about February 2002 and continuing to the present, plaintiff has been employed as an Associate Production Chemist at Applied Biosystems, which is part of Applera Corporation. At all times relevant hereto, plaintiff worked at Applera Corporation's Pleasanton location, which is in Alameda County. Plaintiff was at all times relevant to this action an "employee" of defendant Applera Corporation as that term is defined in California Govt. Code § 12926(c), part of the California Fair Employment and Housing Act ("FEHA," Govt. Code § § 12900 et seq.)
3. Defendant Applera Corporation was a corporation doing business in Alameda County, California at all times relevant hereto. Applera Corporation is and all times relevant

COMPLAINT FOR DAMAGES - 1

1 hereto has been plaintiff's "employer" as that term is defined in California Govt. Code § §
2 12926(d), 12940(a), and 12940(j)(4)(a).

3 4. The acts and omissions described herein all occurred in Alameda County.

4 5. The true names and capacities, whether individual, corporate, associate, or
5 otherwise of the defendants named herein as DOES 1-20, inclusive, are unknown to plaintiff at
6 this time and therefore said defendants are sued by such fictitious names. Plaintiff will seek
7 leave to amend this complaint to insert the true names and capacities of said defendants when the
8 same becomes known to her. Plaintiff is informed and believes and based thereon alleges that
9 each of the fictitiously named defendants is responsible for the wrongful acts alleged herein, and
10 are therefore liable to her as alleged hereinafter.

11 6. Each of the defendants was the agent of the remaining defendants, and in doing
12 the acts alleged, was acting both individually and within the course and scope of such
13 agency/employment, with the knowledge/consent of the remaining defendants.

14 **FIRST CAUSE OF ACTION**

15 **Failure to Engage in the Interactive Process in Good Faith**

16 **(Against all Defendants)**

17 7. Plaintiff incorporates by reference paragraphs 1-6 above, as though fully set forth
18 herein.

19 8. On or about July 6, 2004, plaintiff tripped and sprained her ankle. In September
20 2004, after a short medical leave and physical therapy, plaintiff was released to return to work.
21 As part of her return to work, plaintiff was supposed to be able to sit down whenever she needed
22 to. However, defendants were extraordinarily busy during this timeframe, and short-handed.
23 Plaintiff was pressured to get orders done quickly, and was seldom able to sit down.

24 9. On or about September 21, 2004, while moving about extensively and attending
25 to multiple tasks at the same time, plaintiff re-injured her right ankle. Emergency room
26 physicians diagnosed plaintiff with another ankle sprain, and she was again taken off of work.
27 The re-injury was quite serious, in that plaintiff's ankle did not heal well, and she continued
28 experiencing serious instability in her right ankle. Tests performed by plaintiff's disability

1 insurer in or about January 2005 to evaluate plaintiff's readiness to return to work seriously
2 injured plaintiff's left wrist, requiring a visit to the emergency room. Several subsequent falls
3 further aggravated the ankle injury, and plaintiff also sustained wrist injuries in some of those
4 falls.

5 10. Plaintiff's ankle condition is a physical impairment that limited her ability to
6 perform the major life activity of work. Plaintiff's ankle condition constituted a physical
7 disability within the meaning of Govt. Code § 12926(k).

8 11. The severity of plaintiff's disability required her to remain off of work for a
9 period of time. Plaintiff presented defendants with physicians' notes in support of her requests
10 for time off of work. Plaintiff also regularly left telephone messages with her immediate
11 supervisor, Jonathon Laosiri, regarding her status and the progress of her recovery.

12 12. In January 2006, plaintiff's physicians determined that she was well enough to
13 return to work, with restrictions on the number of hours she could work, a restriction on lifting
14 any more than 20 lbs, and a requirement that she sit down every hour for at least 10 minutes.
15 Plaintiff provided defendants with a physician's note authorizing her to return to work, and
16 specifying these restrictions.

17 13. Plaintiff's immediate supervisor failed to return plaintiff's calls with regard to
18 getting back to work. She then approached defendant's HR department directly, and against
19 explained that she was authorized to return to work, and the nature of her work restrictions.

20 14. Defendant made no effort to get plaintiff back to work. Instead, the company
21 summarily informed plaintiff that she could not return to work unless she either had no
22 restrictions at all and/or could work at least 20 hours per week.

23 15. From January 2006 to the present, plaintiff has continued to seek accommodations
24 that would allow her to return to work. Defendants have continued to refuse to offer plaintiff
25 reasonable accommodations that would allow her to return to work, all without having first
26 engaged in the interactive process in good faith with plaintiff.

27 16. Govt. Code § 12940(n) makes it illegal "for an employer. . . to fail to engage in a
28 timely, good faith interactive process with the employee or applicant to determine effective

1 reasonable accommodation by an employee or applicant with a known physical or mental
2 disability or known medical condition.”

3 17. By refusing to given any consideration whatsoever to plaintiff's request for
4 accommodation, defendants violated their obligation to engage in the interactive process,
5 contrary to Govt. Code § 12940(n).

6 18. Plaintiff filed a timely charge of disability discrimination with the California
7 Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a
8 respondent in the body of said complaint. Plaintiff has received a right to sue notice for this
9 charge pursuant to Govt. Code § 12965(b). Plaintiff filed this action within one year from the
10 date she received her “right to sue” letter from the DFEH, and has therefore properly exhausted
11 her administrative remedies.

12 19. As a direct and proximate result of the wrongful acts of defendants, and each of
13 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,
14 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,
15 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and
16 compensatory damages according to proof.

17 20. As a further direct and proximate result of the wrongful acts of defendants
18 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has
19 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such
20 attorneys' fees and costs under Govt. Code § 12965(b).

21 21. The outrageous conduct of defendants described herein was done with malice,
22 fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design
23 and purpose of injuring her. Defendants, through their officers, managing agents and/or
24 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason
25 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum
26 according to proof at trial.

SECOND CAUSE OF ACTION

Failure to Accommodate

(Against all Defendants)

22. Plaintiff incorporates by reference paragraphs 1-21 above, as though fully set forth herein.

23. Pursuant to Govt. Code § 12940(m), defendants had a duty to accommodate Plaintiff's ankle condition. Despite actual knowledge of plaintiff's disability, and multiple requests for accommodation, defendants refused to offer any reasonable accommodations to allow plaintiff to return to work. In doing the foregoing acts, defendants failed to accommodate plaintiff's disability, in violation of Govt. Code § 12940(m).

24. Plaintiff filed a timely charge of disability discrimination with the California Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a respondent in the body of said complaint. Plaintiff has received a right to sue notice for this charge pursuant to Govt. Code § 12965(b). Plaintiff filed this action within one year from the date she received her "right to sue" letter from the DFEH, and has therefore properly exhausted her administrative remedies.

25. As a direct and proximate result of the wrongful acts of defendants, and each of them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress, including without limitation, depression, hopelessness, embarrassment, humiliation, degradation, loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and compensatory damages according to proof.

26. As a further direct and proximate result of the wrongful acts of defendants described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such attorneys' fees and costs under Govt. Code § 12965(b).

27. The outrageous conduct of defendants described herein was done with malice, fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design and purpose of injuring her. Defendants, through their officers, managing agents and/or

1 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason
2 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum
3 according to proof at trial.

4 **THIRD CAUSE OF ACTION**

5 **Employment Discrimination – Disability**

6 **(Against all Defendants)**

7 28. Plaintiff incorporates by reference paragraphs 1-27 above, as though fully set
8 forth herein.

9 29. The above-described conduct, including but not limited to defendant's refusal to
10 allow plaintiff to return to work, were adverse and discriminatory actions taken based on
11 plaintiff's physical disabilities.

12 30. Plaintiff filed a timely charge of disability discrimination with the California
13 Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a
14 respondent in the body of said complaint. Plaintiff has received a right to sue notice for this
15 charge pursuant to Govt. Code § 12965(b). Plaintiff filed this action within one year from the
16 date she received her "right to sue" letter from the DFEH, and has therefore properly exhausted
17 her administrative remedies.

18 31. As a direct and proximate result of the wrongful actions of defendants, plaintiff
19 has been harmed in that she has suffered actual, consequential and incidental financial losses,
20 including without limitation, loss of earnings and other employment benefits and the intangible
21 loss of employment-related opportunities for growth in her field and damage to her professional
22 reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as
23 damages together with prejudgment interest pursuant to Civil Code § 3287 and or Civil Code §
24 3288 and/or any other provision of law providing for prejudgment interest.

25 32. As a direct and proximate result of the wrongful acts of defendants, and each of
26 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,
27 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,
28

1 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and
2 compensatory damages according to proof.

3 33. As a further direct and proximate result of the wrongful acts of defendants
4 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has
5 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such
6 attorneys' fees and costs under Govt. Code § 12965(b).

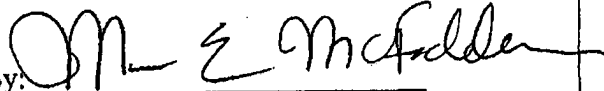
7 34. The outrageous conduct of defendants described herein was done with malice,
8 fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design
9 and purpose of injuring her. Defendants, through their officers, managing agents and/or
10 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason
11 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum
12 according to proof at trial.

13 WHEREFORE, Plaintiff requests the following judgment and relief:

- 14 1. For compensatory and general damages in an amount according to proof;
15 2. For punitive damages;
16 3. For statutory attorneys' fees and costs;
17 4. For pre-judgment and post-judgment interest according to any applicable
18 provision of law, according to proof;
19 5. For costs of suit; and
20 6. For such other and further relief as the court deems proper.

21
22 DATED: April 23, 2007

LAW OFFICES OF MAUREEN E. MCFADDEN

23
24 By: 
25 Maureen E. McFadden

26 Attorney for Plaintiff
27 MEGAN KELLY
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Maureen E. McFadden, SBN 203781 LAW OFFICES OF MAUREEN E. MCFADDEN 819 Bancroft Way Berkeley, CA 94710 TELEPHONE NO.: (510) 845-5203 FAX NO.: (510) 868-0976 ATTORNEY FOR (Name): Plaintiff Megan Kelly		CM-010 ENDORSED FILED ALAMEDA COUNTY APR 23 2007 CLERK OF THE SUPERIOR COURT By Esther Coleman, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse		
CASE NAME: Megan Kelly v. Applera Corporation et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: RG 07322056		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PVP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PVP/DWD (23) Non-PVP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PVP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|

3. Type of remedies sought (check all that apply):
- | | | |
|---|---|---|
| a. <input checked="" type="checkbox"/> monetary | b. <input type="checkbox"/> nonmonetary; declaratory or injunctive relief | c. <input checked="" type="checkbox"/> punitive |
|---|---|---|

4. Number of causes of action (specify): 3

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 23, 2007

Maureen E. McFadden

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Applera Corporation and DOES 1-20, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Megan Kelly

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**ENDORSED
FILED
ALAMEDA COUNTY**

APR 23 2007

CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Alameda County Superior Court, 1225 Fallon Street, Oakland, CA
Rene C. Davidson Courthouse

CASE NUMBER
(Número del Caso):

RG07322056

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Maureen E. McFadden, Law Offices of Maureen E. McFadden, Ph (510) 845-5203, Fax (510) 868-0976, 819
Bancroft Way, Berkeley, CA 94710

DATE:
(Fecha) APR 20 2007

PAT S. SWEETEN

Clerk, by
(Secretario)

Esther Coleman

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

EXHIBIT C

1 JOHN M. SKONBERG, Bar No. 069409
2 TYLER M. PAETKAU, Bar No. 146305
3 MICHAEL G. PEDHIRNEY, Bar No. 233164
4 LITTLER MENDELSON
5 A Professional Corporation
6 650 California Street
7 20th Floor
8 San Francisco, CA 94108.2693
9 Telephone: 415.433.1940

10 Attorneys for Defendant
11 APPLERA CORPORATION

ENDORSED
FILED
ALAMEDA COUNTY

JUN 07 2007

CLERK OF THE SUPERIOR COURT
By Esther Goleman, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 MEGAN KELLY,

11 Plaintiff,

12 v.

13 APPLERA CORPORATION and DOES 1-
14 20, inclusive,

15 Defendants.

Case No. RG07-322056

BY FAX

ANSWER BY DEFENDANT APPLERA
CORPORATION TO PLAINTIFF'S
UNVERIFIED COMPLAINT

Complaint Filed: April 23, 2007

16
17 Defendant APPLERA CORPORATION ("Applera"), answers the unverified
18 Complaint ("Complaint") filed by Plaintiff MEGAN KELLY ("Plaintiff") as follows:

19 GENERAL DENIAL

20 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Applera
21 answers the Complaint filed by Plaintiff by generally denying each and every allegation contained
22 therein, by denying that Plaintiff has been damaged in any amount, or at all, or has sustained any
23 damages as a result of the conduct alleged therein.

24 AFFIRMATIVE DEFENSES

25 Additionally, without assuming the burden of proof on any matters that would
26 otherwise rest with Plaintiff, and expressly denying any and all wrongdoing, Applera asserts the
27 following separate and distinct affirmative defenses to Plaintiff's unverified Complaint.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Neither the Complaint, nor any cause of action set forth therein, states facts sufficient to constitute a cause of action against Applera.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim Against Doe Defendants)

The Complaint, and each and every cause of action thereof, whether considered singly or in combination, fails to state facts sufficient to constitute a cause of action against Doe Defendants.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's claims are barred by the applicable statute of limitations, including but not limited to California Government Code sections 12960 and 12965(b).

FOURTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

Plaintiff failed to comply with applicable procedural and administrative prerequisites including timely charge filing requirements and the exhaustion of all administrative remedies.

FIFTH AFFIRMATIVE DEFENSE

(Legitimate, Non-Discriminatory Personnel Actions)

The employment actions complained of by Plaintiff were based on legitimate, nondiscriminatory reasons.

SIXTH AFFIRMATIVE DEFENSE

(No Knowledge Of Unlawful Conduct)

Applera had no knowledge of any discriminatory or otherwise unlawful behavior by any of its employees, if any, agents, or representatives.

SEVENTH AFFIRMATIVE DEFENSE

(Exercise of Reasonable Care to Prevent Discrimination)

Applera exercised reasonable care to prevent and promptly correct any discriminatory or other unlawful behavior.

EIGHTH AFFIRMATIVE DEFENSE

(Conduct Outside the Course and Scope of Employment)

To the extent employees engaged in any discriminatory or otherwise unlawful behavior, the alleged acts were committed outside the course and scope of employment.

NINTH AFFIRMATIVE DEFENSE

(Avoidable Consequences Doctrine)

Plaintiff's claims, in whole or in part, are barred, or any recovery should be reduced, pursuant to the avoidable consequences doctrine, because Applera took reasonable steps to prevent and correct workplace discrimination, Plaintiff unreasonably failed to use the preventative and corrective opportunities provided to employees by Applera, and reasonable use of the Applera's procedures would have prevented at least some of the harm that the Plaintiff allegedly suffered.

TENTH AFFIRMATIVE DEFENSE

(No Protected Disability)

Plaintiff was not a qualified individual with a disability in that Plaintiff could not perform the essential functions of the position with or without reasonable accommodation.

ELEVENTH AFFIRMATIVE DEFENSE

(No Reasonable Accommodation)

Assuming that Plaintiff made a request for reasonable accommodation, Applera alleges that Plaintiff's requested accommodation is unreasonable.

TWELFTH AFFIRMATIVE DEFENSE

(Undue Hardship)

Assuming that Plaintiff made a request for reasonable accommodation, Applera alleges that Plaintiff's requested accommodation imposes an undue hardship.

THIRTEENTH AFFIRMATIVE DEFENSE

(Direct Threat)

Employment of Plaintiff in the position in question would have posed a direct threat to the health or safety of Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Cooperate in Interactive Process)

Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because of her failure to cooperative in good faith in the interactive process.

FIFTEENTH AFFIRMATIVE DEFENSE

(Disruption of Interactive Process)

Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because of Plaintiff's direct or indirect responsibility for any alleged breakdown in, or disruption of, the interactive process.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Harm Caused by Alleged Failure to Engage in Interactive Process)

Plaintiff suffered no harm or other prejudice as a result of Applera's alleged failure to initiate or properly conduct the interactive process because, at all material times, a reasonable accommodation of Plaintiff's alleged disability was not possible; thus, Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part, or fail as a matter of law.

SEVENTEENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

To the extent during the course of this litigation it acquires any evidence of Plaintiff's wrongdoing, such after-acquired evidence bars Plaintiff's claims of liability or damages or reduces such claims as provided by law.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Workers' Compensation Preemption)

Insofar as Plaintiff alleges she suffered from any physical or emotional injury as a result of Applera's conduct, her claim is preempted by the California Workers' Compensation statutes, including California Labor Code section 3601, *et seq.*, inasmuch as any compensable alleged injury to Plaintiff occurred at a time when she was subject to California Workers' Compensation provisions; at the time of such alleged injury Plaintiff was performing services growing out of and incidental to her employment and was acting within the course and scope of her employment; the alleged injury was proximately caused by her employment; and Applera was providing workers compensation coverage without any charge to the employee.

NINETEENTH AFFIRMATIVE DEFENSE

(Plaintiff's Conduct)

The injuries and damages alleged in the Complaint were caused by and/or were contributed to by Plaintiff's own acts or failure to act and that Plaintiff's recovery, if any, should be reduced by an amount proportionate to the amount by which said acts caused or contributed to said alleged injuries or damages.

TWENTIETH AFFIRMATIVE DEFENSE

(Set-Offs)

If Plaintiff is judged to be entitled to any recovery based on her Complaint, Applera is entitled to a set-off for each of the following, respectively and separately: damages paid to Plaintiff by order of the California Workers' Compensation Appeals Board, on related claims, if any; state disability payments to Plaintiff for related claims, if any; federal Social Security benefits paid to Plaintiff for related reasons, if any; and state unemployment compensation paid to Plaintiff for related reasons, if any.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Any award to Plaintiff must be reduced on the basis that Plaintiff failed and refused to make reasonable efforts to mitigate, minimize or avoid any alleged losses or damages.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Estoppel, Waiver, Unclean Hands and/or Laches)

Plaintiff's claims are barred by the equitable doctrines of estoppel, waiver, unclean hands and/or laches.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure to State Grounds for Punitive Damages)

Plaintiff has failed to state facts sufficient to constitute a claim for punitive damages.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Alternative Concurrent Sources of Emotional Distress)

To the extent Plaintiff suffered any symptoms of mental or emotional distress or injury, it was the result of a pre-existing psychological disorder or alternative concurrent cause(s), and not the result of any act or omission by Applera.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to State Grounds for Attorneys' Fees and Costs)

Plaintiff has failed to state facts sufficient to constitute a claim for which attorneys' fees and costs may be granted.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Unconstitutionality of Punitive Damages)

The United States and California Constitutions bar any claim by Plaintiffs for punitive damages.

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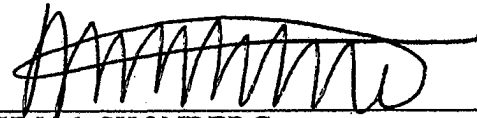
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WHEREFORE, Applera prays:

1. That Plaintiff takes nothing by her Complaint and that the Complaint be dismissed in its entirety, with prejudice;
2. That Applera be awarded full judgment in this action;
3. That Applera be awarded costs of suit and attorneys' fees incurred herein; and
4. That Applera be awarded such other and further relief as the Court deems just and proper.

Dated: June 7, 2007



JOHN M. SKONBERG
TYLER M. PAETKAU
MICHAEL G. PEDHIRNEY
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
APPLERA CORPORATION

Firmwide: 82561145.1 008292.1051

**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 07 2007

CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy

1 JOHN M. SKONBERG, Bar No. 069409
2 TYLER M. PAETKAU, Bar No. 146305
3 MICHAEL G. PEDHIRNEY, Bar No. 233164
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10 Attorneys for Defendant
11 APPLERA CORPORATION
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 MEGAN KELLY,

Case No. RG07-322056

16 Plaintiff,

17 v.

PROOF OF SERVICE

BY FAX

18 APPLERA CORPORATION and DOES 1-
19 20, inclusive,

Complaint Filed: April 23, 2007

20 Defendants.

PROOF OF SERVICE

21 I am a resident of the State of California, over the age of eighteen years, and not a
22 party to the within action. My business address is 650 California Street, 20th Floor, San Francisco,
23 California 94108.2693. On June 7, 2007, I served the within document(s):

24 ➤ **ANSWER BY DEFENDANT APPLERA CORPORATION
25 TO PLAINTIFF'S UNVERIFIED COMPLAINT**



27 by facsimile transmission on that date. This document was transmitted by using a
28 facsimile machine that complies with California Rules of Court Rule 2003(3),
telephone number 415.399.8490. The transmission was reported as complete and
without error. The names and facsimile numbers of the person(s) served are as set
forth below.

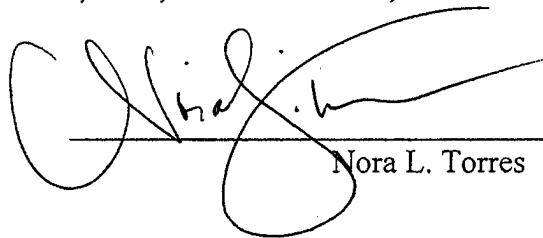
- 1 ☒ by placing a true copy of the document(s) listed above for collection and mailing
2 following the firm's ordinary business practice in a sealed envelope with postage
3 thereon fully prepaid for deposit in the United States mail at San Francisco,
4 California addressed as set forth below.
- 5 ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery
6 fees provided for, in an overnight delivery service pick up box or office designated
7 for overnight delivery, and addressed as set forth below.
- 8 ☐ by personally delivering a copy of the document(s) listed above to the person(s) at
9 the address(es) set forth below.

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Maureen E. McFadden, Esq.
Law Offices of Maureen E. McFadden
819 Bancroft Way
Berkeley, CA 94710
Fax: (510) 868-0976

I am readily familiar with the firm's practice of collection and processing
correspondence for mailing and for shipping via overnight delivery service. Under that practice it
would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,
deposited in an overnight delivery service pick-up box or office on the same day with postage or fees
thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct. Executed on June 7, 2007, at San Francisco, California.


Nora L. Torres

Firmwide:82421970.1 008292.1051